

Before the  
**Federal Communications Commission**  
 Washington, D.C. 20554

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**AUG 19 1999**

In re Applications of	)	
Achernar Broadcasting Company	)	MM Docket No. 86-440
Lindsay Television	)	File No. BPCT-860410KP
For Construction Permit For a New UHF TV	)	File No. BPCT-860410KQ
Station on Channel 64 at Charlottesville,	)	
Virginia	)	
To: The Commission	)	
_____	)	

**REPLY COMMENTS OF SHENANDOAH VALLEY EDUCATIONAL TELEVISION**

Pursuant to the Commission's Order, released June 28, 1999,<sup>1</sup> Shenandoah Valley Educational Television Corporation ("Shenandoah Valley") reiterates its strong objections to the allotment and assignment of channel 19 to the Charlottesville Broadcasting Corporation ("CBC"), the merged entity of the above-captioned applicants, Achernar Broadcasting Company and Lindsay Television, Inc.. Today, Shenandoah Valley briefly responds to the following comments submitted in this proceeding.

<sup>1</sup> See Order, In re Applications of Achernar Broadcasting Company and Lindsay Television, Inc., For Construction Permit for a new Television Station, Channel 64, Charlottesville, Virginia, MM Docket No. 86-440; File No. BPCT-860410KP, File No. BPCT-860410KQ (released June 28, 1999)(hereinafter, "Order"), at ¶4.

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1. CBC's responsive comments claim that "no entity with a legitimate interest in the matter opposes a grant on channel 19."<sup>2</sup> This assertion is not only erroneous but dangerously dismissive of the important public interest issues raised by this proceeding. Similarly, the Mass Media Bureau has also dismissed Shenandoah Valley's previously filed comments as those of an operator with secondary status, and thus no standing to challenge the proposed allocation and assignment.<sup>3</sup> While it is true that Shenandoah Valley, as a translator operation, would lack the status to challenge an appropriately granted application for an already authorized allotment solely on the basis of interference to its service, both CBC's and the Bureau's comments fail to recognize the main thrust of Shenandoah Valley's objections to the grant of channel 19 to CBC.<sup>4</sup> As a potential applicant who would be denied the opportunity to apply for the channel if CBC's proposal were granted, and as a member of the public who would be denied the opportunity to participate in the proper rulemaking procedure, Shenandoah Valley has standing to raise these issues and the equities to support its position. Whether or not Shenandoah Valley's translator operations have primary status has nothing to do with the standing to raise the issues or the equities of the situation.

Further, as an *applicant* for a construction permit, CBC does not yet have any status, let alone primary status in this matter. Once again, to seek use of channel 19 in Charlottesville, CBC should submit to the Commission a petition for rulemaking to amend the

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<sup>2</sup> See Responsive Comments of Achnar and Lindsay, In re Applications of Achnar Broadcasting Company and Lindsay Television, Inc., For Construction Permit for a new Television Station, Channel 64, Charlottesville, Virginia, MM Docket No. 86-440; File No. BPCT-860410KP, File No. BPCT-860410KQ (filed August 12, 1999)(hereinafter "CBC Responsive Comments") at ¶4.

<sup>3</sup> See Mass Media Bureau's Comments, In re Applications of Achnar Broadcasting Company and Lindsay Television, Inc., For Construction Permit for a new Television Station, Channel 64, Charlottesville, Virginia, MM Docket No. 86-440; File No. BPCT-860410KP, File No. BPCT-860410KQ (filed July 28, 1999)(hereinafter "Mass Media Bureau Comments") ¶3.

Table of Allotments.<sup>5</sup> Citizens as well as potential competitors must be afforded the opportunity to contribute to the Commission's informed decision of whether to proceed with such an allotment, especially pertinent here, and whether the channel should be allotted for commercial or noncommercial programming service. As noted by Shenandoah Valley previously, the regulations require that an applicant requesting an application change of the magnitude contemplated by CBC's proposal must petition the Commission for a rulemaking.<sup>6</sup> Further, the Commission's practice in amending the Table of Allotments has long been established as utilizing the rulemaking procedure. This practice is judicious as a rulemaking is often the best way to ensure "equality of treatment among similarly situated" persons.<sup>7</sup> The rulemaking required in this procedure, as one that will alter citizens' legal rights, requires public procedures, generally the issuance of a public notice of the opportunity for public comments in response to the notice.<sup>8</sup> The failure to give either notice or the opportunity for public comments would deprive the public its rights to participate and would leave the Commission with an inadequate record upon which to make this decision.

If the channel is allotted to Charlottesville, Section 309 of the Communications Act of 1934 clearly establishes that the procedures for assigning such channels must be competitive proceedings, and merely handing CBC the new channel without affording others the same opportunity directly violates this mandate. Not only must other applicants be given the opportunity to apply, but concerned parties, like Shenandoah Valley, should be afforded the right to register objections.

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<sup>4</sup> See 47 C.F.R. §73.607.

<sup>5</sup> See 47 C.F.R. § 73.3572.

<sup>6</sup> See 47 C.F.R. §73.3572(a)(1) and (2).

<sup>7</sup> See *Dixon v. Love*, 431 U.S. 105 (1977).

2. In addition, the Mass Media Bureau's Comments state that the "applicants have made a good cause showing and demonstrated that their amendment was necessitated by events which could not have been reasonably foreseen and which do not warrant enlargement of issues or addition of new parties."<sup>9</sup> Allotting and assigning a new channel to the Charlottesville area expands the issues in that CBC is asking for a waiver of nearly every relevant rule for this situation. Further, the proposal expands the parties with an interest in the proceeding, specifically adding members of the affected public and potential competitors for channel 19 who would have participated had they known that the issue pertained to a new channel 19 allotment in Charlottesville.

3. Finally, APCO also registered its comments in this matter, and noted that "[t]he Commission then gave the Applicants (and similarly situated applicants for reallocated channels) an opportunity to amend their applications and seek alternative channels."<sup>10</sup> Shenandoah Valley stresses that the notice of the opportunity to amend has not been issued, and until the Mass Media Bureau issues the *public notice* opening the window for amending CBC's and other similarly situated applicant's applications,<sup>11</sup> setting the appropriate parameters and procedural safeguards that will apply to such amendments, CBC's request is untimely.

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<sup>8</sup> See 5 U.S.C.A. §553(b)(A).

<sup>9</sup> Mass Media Bureau Comments at ¶5.


<sup>10</sup> See Comments of APCO, In re Applications of Achernar Broadcasting Company and Lindsay Television, Inc., For Construction Permit for a new Television Station, Channel 64, Charlottesville, Virginia, MM Docket No. 86-440; File No. BPCT-860410KP, File No. BPCT-860410KQ (filed July 28, 1999) p. 1.

<sup>11</sup> See Report and Order, In the matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band, at ¶40, ET Docket No. 97-157 (Adopted December 31, 1997, Released January 6, 1998).

Shenandoah Valley strongly reiterates that the public's interest both in having a voice in the critical decisions about the best use of its scarce spectrum resource and in retaining and expanding quality educational service in Charlottesville dictate that the Commission dismiss CBC's alternative proposal.

Respectfully Submitted,  
SHENANDOAH VALLEY  
EDUCATIONAL TELEVISION

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August 19, 1999

CERTIFICATE OF SERVICE

I, Cara Maggioni, hereby certify that a true and correct copy of the foregoing "Reply Comments" was this August 19, 1999 sent by first-class mail, postage prepaid to the following:

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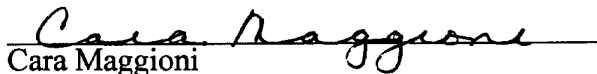
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